Supreme Court, U.S.
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No. 99-1990

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2000

NATHAN R., by and through his parents and next friends, RICHARD AND NANCY R.,

Petitioners,

vs.

BOARD OF EDUCATION OF OAK PARK AND RIVER FOREST HIGH SCHOOL DISTRICT NO. 200,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

I. Petitioners Needlessly Convolute The Question Presented For Review.

Although not totally incorrect, Petitioner's formulation of the question presented could scarcely be more argumentative and confusing. Stated more succinctly, the question presented is:

> Whether a party that obtains interim relief in the form of the application of the IDEA's stay-put provision, but fails to obtain an enforceable judgment, settlement, or consent decree, is a prevailing party entitled to attorney's fees under the IDEA?

II. There Is No Compelling Reason For Granting A Writ Of Certiorari.

While neither controlling nor fully measuring this Court's discretion, compelling reasons for granting a writ of certiorari include a conflict between courts of appeals on an important matter, or a decision by a court of appeals on an important federal question that conflicts with a decision of this Court. *Sup. Ct. R. 10.* Neither of these reasons support Petitioners' request in this case.[1]

Petitioners erroneously contend that the Seventh Circuit's decision is in conflict with the Sixth Circuit's unpublished decision in Board of Educ. of the Avon Lake City Sch. Dist. v. Patrick M., No. 98-3848, 2000 U.S. App. LEXIS

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[1] Petitioners do not allege a conflict between the Seventh Circuit's decision and a decision of this Court.

11869 (6th Cir. May 24, 2000). Avon Lake is unrelated to the Seventh Circuit's decision. First, it did not involve the issue of whether invocation of the IDEA's stay-put provision gives rise to prevailing party status under the IDEA. Second, the Seventh Circuit's decision accords with Avon Lake because the Seventh Circuit also looked to the proceedings at the administrative-review level to determine the parents' entitlement to attorneys' fees upon finding that the federal court litigation was moot. Avon Lake, 2000 U.S. App. LEXIS at *15; Board of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Nathan R., 199 F.3d 377, 381-382 (7th Cir. 2000).

Third, and most importantly, the denial of attorneys' fees by the Seventh Circuit in this case was based on separate and wholly unrelated considerations. In Avon Lake, the Sixth Circuit awarded attorneys' fees because the administrative review officer ruled that the school district failed to offer the student an appropriate special education placement and ordered it to reimburse the cost of his private school tuition. Avon Lake, 2000 U.S. App. LEXIS at ** 12-15. In the instant case, the Seventh Circuit also found that attorney's fees may be awarded based on the outcome of administrative proceedings. Nathan R., 199 F.3d at 381-382. However, it denied Petitioners' fee request on the narrow basis of its prior holding that invocation of the IDEA's stay-put provision does not entitle a party to attorney's fees. Id. In so doing, the Seventh Circuit neither rejected nor contradicted the Sixth Circuit in Avon Lake. Indeed, it explicitly stated that a fee award could result from an administrative decision. Thus, while the Seventh Circuit rejected Petitioners' fee request, it did so for reasons that do no relate to, much less conflict with, the Sixth Circuit's decision in Avon Lake.

Petitioners also attempt to conjure a circuit split by reference to the First Circuit's decision in Haley v. Pataki, 106

F.3d 478 (2nd Cir. 1997) and the Second Circuit's decision in Coalition For Basic Human Needs v. King, 691 F.2d 597 (1st Cir. 1982). (Petitioners' Brief at 23-25). These decisions did not involve the IDEA at any level, let alone on the obscure issue of the availability of attorneys' fees for the invocation of the stay-put provision. Haley involved an action for declaratory judgment against the State of New York by legislative employees claiming that their constitutional rights were violated by the withholding of their salary payments from an appropriations bill pending passage of the budget. Equally removed from the Seventh Circuit's decision is King, which involved a civil rights action filed by welfare payment recipients after the Massachusetts legislature cut off funding during a budget impasse.

As an implicit concession of the weakness of their position, Petitioners open their discussion of federal court precedent by contending that the Seventh Circuit's decision conflicts with district courts in other circuits (Petitioner's Brief at 17-19). As already set forth, *supra*, this is not a compelling reason for granting a writ of certiorari. *See Sup. Ct. R. 10.* District court cases on the issue of attorneys' fees for invocation of the IDEA's stay-put provision are also so isolated and sporadic that they can hardly be called a consensus.

For example, one of the decisions cited by Petitioners was not even followed by the same court a mere one year later. See J.C. v Mendham Township Bd. of Educ., 29 F.Supp.2d 214, 221-222 (D.N.J. 1998) (refusing to follow Bayonne Bd. of Educ. v. R.S., 954 F.Supp. 933 (D.N.J. 1997) because application of the stay-put provision in that case required the court to interpret the terms of a settlement agreement previously entered into by the parties). Another district court case cited by Petitioners is also unavailing because there, the district court's award of fees was based on the plaintiffs' receipt of an "enforceable

judgment" against the school district that required it to pay the student's private school tuition and costs during the pendency of administrative proceedings. Jarczynski v. St. Mary's County Pub Sch., 30 IDELR 38, 40 (D. Md. 1999). Here, the Seventh Circuit explicitly recognized that Petitioners could have been entitled to attorneys' fees had they obtained an enforceable judgment against the School District. Nathan R., 199 F.3d at 382.

III. Even If The Question Presented By Petitioners Has Created A Conflict Among Courts Of Appeals, Petitioners Have Not Presented An Important Matter For This Court's Review.

Petitioners' request for a writ of certiorari can be disposed of without even considering the absence of a sound legal basis for its issuance because the Seventh Circuit's decision will have little or no impact on the provision of special education services. Petitioners sanctimoniously insist that the Seventh Circuit's decision sounds the death knell for the ability of high school students to utilize the IDEA's stay-put provision. (Petitioner's Brief at 10-13). In this regard, they stake the importance of their appeal on the proposition that school districts will frivolously protract litigation on the stay-put issue, all the while incurring their own attorneys' fees, in the hope that it is mooted by a student's graduation prior to a final judgment on the merits. Petitioners' argument implies not only that school districts are motivated to spend large sums to subvert students' IDEA rights, but that they are so tactically incompetent and fiscally irresponsible to the public they serve that they will needlessly incur their own attorneys' fees just to do so. Viewed from this perspective, Petitioners' argument is exposed for what it is – an unfounded exercise in hysteria.

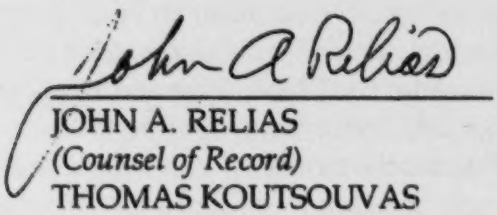
Petitioners not only misstate the utility of the Seventh Circuit's decision as a litigation device for so-called "recalcitrant" school districts, they exaggerate the importance of the holding. The vast majority of IDEA litigation involves disputes over the allocation of financial responsibility for the cost of special education placements or related services. Litigation on these issues, as well as on the issue of compensatory special education services, cannot be mooted by events (like high school graduation) that terminate eligibility for services under the IDEA. The Seventh Circuit's decision is therefore of decidedly limited impact. Indeed, while IDEA litigation has proliferated throughout the federal courts, there is not a single decision by a Court of Appeals on the question presented herein outside the Seventh Circuit. This dearth of analogous precedent underscores the immateriality of the Seventh Circuit's decision for the purpose of an appeal to this Court.

Thus stripped of its hyperbolic luster, Petitioners' request for a writ of certiorari becomes nothing more than the latest effort by plaintiffs' attorneys to gorge at the public trough. Yet the IDEA's fee-shifting provision was not enacted for the special purpose of enriching attorneys specializing in educational matters. Patrick G. v. City of Chicago Sch. Dist. No. 299, No. 94 C 3417, 1994 WL 715590, at *4 (N.D. Ill. Oct. 27, 1994), aff'd, 69 F.3d 540 (7th Cir. 1995). Petitioners have not presented any reason for this Court to abandon that principle.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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